

**UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION**

IN RE:	)	
	)	
Michael D. Rhoades,	)	
Angela E. Rhoades,	)	CASE NO. B-08-10758
	)	Chapter 7
Debtors.	)	
_____	)	

**RESPONSE AND OBJECTION TO THE MOTION OF BANKRUPTCY  
ADMINISTRATOR FOR DISMISSAL OF CASE PURSUANT TO  
SECTIONS 707(b)(1) AND 707(b)(3)**

**NOW COMES** Michael D. Rhoades and Angela E. Rhoades, by and through counsel, and moves this Court to deny the Bankruptcy Administrator's Motion For Dismissal Of Case Pursuant to Sections 707(b)(1) and 707(b)(3), on the grounds of bad faith and/or totality of the circumstances of the Debtors' financial situation, and in support thereof, respectfully show unto the Court the following:

1. The Debtors, Michael D. Rhoades and Angela E. Rhoades, hereinafter "the Debtors," filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code On May 21, 2008 (the "Petition Date"). The Debtors' Section 341 Meeting of Creditors was held on June 23, 2008. In consideration of the factors enumerated in Section 707(b)(3) of the United States Bankruptcy Code, the Debtors' case should not be dismissed for bad faith or in consideration of the totality of the circumstances of the Debtors' financial condition.

2. While the Bankruptcy Administrator makes no assertion of bad faith at this time, the Debtors assert that there has been no bad faith on their part in the manner of this filing. This filing was necessitated by a downturn in the construction market in which the Male Debtor is employed and the failure of the Female Debtor to be able to return to work as planned. This Chapter 7 case was filed in an effort by the Debtors to retain their home where their twin sons currently reside with them.

3. The totality of the Debtors' circumstances indicates that the granting of their discharge would not be an abuse of the provisions of Chapter 7.

4. For these reasons, the Debtors would object to the Bankruptcy Administrator's request that their case should be dismissed pursuant to Section 707(b)(1) of the Bankruptcy Code as it is not an abusive case based on the totality of the circumstances of the Debtors' financial situation nor was it filed on bad faith.

**WHEREFORE**, the Debtors respectfully request:

A. That a pretrial hearing be scheduled prior to the setting of a hearing on the merits of this Motion so that deadlines for discovery and other pretrial matters may be discussed;

B. That this Court dismiss the Bankruptcy Administrator's Motion For Dismissal of Case Pursuant to Section 707(b)(1) and 707 (b)(3); and

C. That the Court grant such other and further relief as this Court deems just and appropriate.

**THIS** the 5<sup>th</sup> day of August, 2008.

/s/ J. Marshall Shelton  
J. Marshall Shelton, NCSB 31784  
*Attorney for Debtors*  
**IVEY, McCLELLAN, GATTON & TALCOTT, LLP**  
P. O. Box 3324  
Greensboro, NC 27402-3324  
Telephone: 336/274-4658  
Facsimile: 336/274-4540

**CERTIFICATE OF SERVICE**

**THIS IS TO CERTIFY** that on August 5, 2008, the undersigned served a copy of the **Response And Objection To The Motion of Bankruptcy Administrator For Dismissal of Case Pursuant to Sections 707(b)(1) and 707(b)(3)**, by depositing the same, enclosed in an envelope, addressed to the following parties in interest, at their last known addresses as shown below, in a post office or official depository under the exclusive care and custody of the United States Postal Service:

Michael D. West, Esq. (Hand Delivery)  
Bankruptcy, Administrator  
101 South Edgeworth Street  
Greensboro, NC 27401

Michael and Angela Rhoades  
6077 Old Brick Store Road  
Greensboro, NC 27455

**THIS** the 5<sup>th</sup> day of August, 2008.

/s/ J. Marshall Shelton  
J. Marshall Shelton, NCSB 31784  
*Attorney for Debtors*  
**IVEY, McCLELLAN, GATTON & TALCOTT**  
P. O. Box 3324  
Greensboro, NC 27402-3324  
Telephone: 336/274-4658  
Facsimile: 336/274-4540